

**ASSEMBLY BILL**

**No. 2671**

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**Introduced by Assembly Member Cook**

February 19, 2010

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An act to amend Section 23153 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2671, as introduced, Cook. Income tax: corporations: minimum franchise tax.

Existing law, generally, imposes a minimum franchise tax of \$800, except as provided, on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state, and on every limited partnership, limited liability partnership, and limited liability company registered, qualified to transact business, or doing business in this state, as specified.

This bill would exempt a corporation solely owned by a deployed member of the United States Armed Forces, as specified, from paying the minimum franchise tax if the corporation ceased operation or is operating at a loss, as defined.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 23153 of the Revenue and Taxation Code  
2     is amended to read:

1     23153. (a) Every corporation described in subdivision (b) shall  
2 be subject to the minimum franchise tax specified in subdivision  
3 (d) from the earlier of the date of incorporation, qualification, or  
4 commencing to do business within this state, until the effective  
5 date of dissolution or withdrawal as provided in Section 23331 or,  
6 if later, the date the corporation ceases to do business within the  
7 limits of this state.

8     (b) Unless expressly exempted by this part or the California  
9 Constitution, subdivision (a) shall apply to each of the following:

10    (1) Every corporation that is incorporated under the laws of this  
11 state.

12    (2) Every corporation that is qualified to transact intrastate  
13 business in this state pursuant to Chapter 21 (commencing with  
14 Section 2100) of Division 1 of Title 1 of the Corporations Code.

15    (3) Every corporation that is doing business in this state.

16    (c) The following entities are not subject to the minimum  
17 franchise tax specified in this section:

18    (1) Credit unions.

19    (2) Nonprofit cooperative associations organized pursuant to  
20 Chapter 1 (commencing with Section 54001) of Division 20 of the  
21 Food and Agricultural Code that have been issued the certificate  
22 of the board of supervisors prepared pursuant to Section 54042 of  
23 the Food and Agricultural Code. The association shall be exempt  
24 from the minimum franchise tax for five consecutive taxable years,  
25 commencing with the first taxable year for which the certificate  
26 is issued pursuant to subdivision (b) of Section 54042 of the Food  
27 and Agricultural Code. This paragraph only applies to nonprofit  
28 cooperative associations organized on or after January 1, 1994.

29    (d) (1) Except as provided in paragraph (2), paragraph (1) of  
30 subdivision (f) of Section 23151, paragraph (1) of subdivision (f)  
31 of Section 23181, and paragraph (1) of subdivision (c) of Section  
32 23183, corporations subject to the minimum franchise tax shall  
33 pay annually to the state a minimum franchise tax of eight hundred  
34 dollars (\$800).

35    (2) The minimum franchise tax shall be twenty-five dollars  
36 (\$25) for each of the following:

37    (A) A corporation formed under the laws of this state whose  
38 principal business when formed was gold mining, which is inactive  
39 and has not done business within the limits of the state since 1950.

1 (B) A corporation formed under the laws of this state whose  
2 principal business when formed was quicksilver mining, which is  
3 inactive and has not done business within the limits of the state  
4 since 1971, or has been inactive for a period of 24 consecutive  
5 months or more.

6 (3) For purposes of paragraph (2), a corporation shall not be  
7 considered to have done business if it engages in other than mining.

8 (e) Notwithstanding subdivision (a), for taxable years beginning  
9 on or after January 1, 1999, and before January 1, 2000, every  
10 “qualified new corporation” shall pay annually to the state a  
11 minimum franchise tax of five hundred dollars (\$500) for the  
12 second taxable year. This subdivision shall apply to any corporation  
13 that is a qualified new corporation and is incorporated on or after  
14 January 1, 1999, and before January 1, 2000.

15 (1) The determination of the gross receipts of a corporation, for  
16 purposes of this subdivision, shall be made by including the gross  
17 receipts of each member of the commonly controlled group, as  
18 defined in Section 25105, of which the corporation is a member.

19 (2) “Gross receipts, less returns and allowances reportable to  
20 this state,” means the sum of the gross receipts from the production  
21 of business income, as defined in subdivision (a) of Section 25120,  
22 and the gross receipts from the production of nonbusiness income,  
23 as defined in subdivision (d) of Section 25120.

24 (3) “Qualified new corporation” means a corporation that is  
25 incorporated under the laws of this state or has qualified to transact  
26 intrastate business in this state, that begins business operations at  
27 or after the time of its incorporation and that reasonably estimates  
28 that it will have gross receipts, less returns and allowances,  
29 reportable to this state for the taxable year of one million dollars  
30 (\$1,000,000) or less. “Qualified new corporation” does not include  
31 any corporation that began business operations as a sole  
32 proprietorship, a partnership, or any other form of business entity  
33 prior to its incorporation. This subdivision shall not apply to any  
34 corporation that reorganizes solely for the purpose of reducing its  
35 minimum franchise tax.

36 (4) This subdivision shall not apply to limited partnerships, as  
37 defined in Section 17935, limited liability companies, as defined  
38 in Section 17941, limited liability partnerships, as defined in  
39 Section 17948, charitable organizations, as described in Section  
40 23703, regulated investment companies, as defined in Section 851

1 of the Internal Revenue Code, real estate investment trusts, as  
2 defined in Section 856 of the Internal Revenue Code, real estate  
3 mortgage investment conduits, as defined in Section 860D of the  
4 Internal Revenue Code, ~~financial asset securitization investment~~  
5 ~~trusts, as defined in Section 860L of the Internal Revenue Code,~~  
6 qualified Subchapter S subsidiaries, as defined in Section  
7 1361(b)(3) of the Internal Revenue Code, or to the formation of  
8 any subsidiary corporation, to the extent applicable.

9 (5) For any taxable year beginning on or after January 1, 1999,  
10 and before January 1, 2000, if a corporation has qualified to pay  
11 five hundred dollars (\$500) for the second taxable year under this  
12 subdivision, but in its second taxable year, the corporation's gross  
13 receipts, as determined under paragraphs (1) and (2), exceed one  
14 million dollars (\$1,000,000), an additional tax in the amount equal  
15 to three hundred dollars (\$300) for the second taxable year shall  
16 be due and payable by the corporation on the due date of its return,  
17 without regard to extension, for that year.

18 (f) (1) Notwithstanding subdivision (a), every corporation that  
19 incorporates or qualifies to do business in this state on or after  
20 January 1, 2000, shall not be subject to the minimum franchise tax  
21 for its first taxable year.

22 (2) This subdivision shall not apply to limited partnerships, as  
23 defined in Section 17935, limited liability companies, as defined  
24 in Section 17941, limited liability partnerships, as defined in  
25 Section 17948, charitable organizations, as described in Section  
26 23703, regulated investment companies, as defined in Section 851  
27 of the Internal Revenue Code, real estate investment trusts, as  
28 defined in Section 856 of the Internal Revenue Code, real estate  
29 mortgage investment conduits, as defined in Section 860D of the  
30 Internal Revenue Code, ~~financial asset securitization investment~~  
31 ~~trusts, as defined in Section 860L of the Internal Revenue Code,~~  
32 and qualified Subchapter S subsidiaries, as defined in Section  
33 1361(b)(3) of the Internal Revenue Code, to the extent applicable.

34 (3) This subdivision shall not apply to any corporation that  
35 reorganizes solely for the purpose of avoiding payment of its  
36 minimum franchise tax.

37 (g) Notwithstanding subdivision (a), a domestic corporation, as  
38 defined in Section 167 of the Corporations Code, that files a  
39 certificate of dissolution in the office of the Secretary of State  
40 pursuant to subdivision ~~(e)~~ (b) of Section 1905 of the Corporations

1 Code, prior to its amendment by the act amending this subdivision,  
2 and that does not thereafter do business shall not be subject to the  
3 minimum franchise tax for taxable years beginning on or after the  
4 date of that filing.

5 (h) The minimum franchise tax imposed by paragraph (1) of  
6 subdivision (d) shall not be increased by the Legislature by more  
7 than 10 percent during any calendar year.

8 (i) *(1) Notwithstanding subdivision (a), a corporation solely*  
9 *owned by a deployed member of the United States Armed Forces*  
10 *shall not be subject to the minimum franchise tax for any taxable*  
11 *year the owner is deployed and the corporation operates at a loss*  
12 *or ceases operation.*

13 (2) (A) *For the purposes of this section, “deployed” means*  
14 *being called to active duty or active service during a period when*  
15 *a Presidential Executive order specifies that the United States is*  
16 *engaged in combat or homeland defense.*

17 (B) *“Deployed” does not include either of the following:*

18 (i) *Temporary duty for the sole purpose of training or*  
19 *processing.*

20 (ii) *A permanent change of station.*

21 (3) *For the purposes of this subdivision, “operating at a loss”*  
22 *means negative net income as defined in Section 24341.*

23 SEC. 2. This act provides for a tax levy within the meaning of  
24 Article IV of the Constitution and shall go into immediate effect.